

Request for Proposal

A Review of Atlantic Salmon Hatchery Protocols, Production, and Product Assessment

RFP # 806422

Maine Atlantic Salmon Commission

Applications are due no later than Friday, October 6, 2006 by 2 PM at the Division of Purchases. Applications clearly marked "Review of Atlantic Salmon Hatchery Protocols, Production, and Product Assessment – RFP# 806422" should be mailed to the Division of Purchases; Burton M. Cross State Office Building, 4th floor; 111 State Street, 9 State House Station; Augusta, ME 04333-0009.

I. Project Overview

The Maine Atlantic Salmon Commission is requesting proposals from qualified individuals or consulting firms to determine whether the current hatchery operations, protocols and practices are being implemented in the most scientifically sound manner with the greatest potential to further recovery of the Atlantic salmon, and that assessment and evaluation is appropriately integrated into the hatchery program.

The RFP is based on discussions among the Atlantic Salmon Commission, NOAA Fisheries Service, and U.S. Fish and Wildlife Service management and biological staff, and the recommendation of the National Research Council of the National Academies.¹

II. Background Information

The Maine Atlantic Salmon Commission is the lead agency for Atlantic salmon recovery statewide. The Commission's purpose is: *to protect, preserve, enhance, restore and manage the Atlantic salmon and its habitat; to secure a sustainable recreational fishery in the State; and to conduct and coordinate all projects involving research, planning, management, restoration or propagation of the Atlantic salmon* [Title 12 M.R.S.A. §9901 (1)]. ASC works in partnership with National Marine Fisheries Service and the US Fish and Wildlife Service on all aspects of Atlantic salmon recovery.

Current Atlantic salmon hatchery/stocking operations in Maine reflect approaches to restoration presented in the U.S. Fish and Wildlife Service (1989) *Environmental Impact Statement for New England*²; the *Captive Management Plan for Atlantic Salmon at Craig Brook National Fish Hatchery*³; the *Final Recovery Plan for the Gulf of Maine Distinct Population Segment of Atlantic Salmon (Salmo salar)*⁴; the *Annual Report of the U.S Atlantic Salmon Assessment Committee*⁵; and builds on previous stocking policies of the Atlantic Salmon Commission (Baum et. Al.) (1995)⁶. Stocking occurs within the geographic range of the Gulf of Maine Distinct Population Segment (DPS) and in the historic range of salmon in Maine. The current restoration and recovery program subscribes to a river-specific policy for stocking Maine rivers to maintain the genetic integrity of existing Atlantic salmon runs. Exceptions have been made for rivers known to have lost their salmon runs entirely, or where the population is too small to be considered viable. ASC presents all stocking recommendations to the Maine Technical Advisory Committee (TAC) for approval prior to any stocking activities. Final stocking plans are approved by the ASC Board prior to permits being approved by the ASC Executive Director. The objectives of the Maine hatchery/stocking program are two fold: to maintain populations of juveniles in productive historic habitat and to return adults.

The salmon stocking program in Maine uses river-specific fish where each river receives progeny of fish previously collected from the same river. This protocol is followed on the Sheepscot, Dennys, Narraguagus, Machias, East Machias, Pleasant, and Penobscot rivers. Atlantic salmon restoration in the Saco, Union, and St. Croix rivers has used juveniles produced from Penobscot River origin fish. In addition to the USFWS hatcheries, three satellite hatcheries are operated by non-governmental Atlantic salmon organizations: Saco Salmon Club, Wild Salmon Resource Center, and Atlantic Salmon for Northern Maine. The river-specific broodstock program is based on captive reared fish brought to the hatchery as parr or smolt. The Penobscot River is the only river where eggs are taken exclusively from sea-run adults. The Penobscot and Aroostook River are the only rivers where eggs are taken from returning adults in addition to captive reared broodstock. While fry are the most numerous life stage stocked, smolt, parr and adults are also stocked in Maine rivers. The ASC and

NOAA Fisheries staff conducts routine monitoring of the abundance and status of juvenile and adult salmon in most of Maine's Atlantic salmon watersheds. The USFWS is responsible for genetic characterization and monitoring for all juveniles (and adults from the Penobscot River) brought into the USFWS hatchery system for broodstock purposes. The USFWS participates in various genetic research and other projects, including determination of the origin of Penobscot returning adults, screening for aquaculture origin individuals, and other identification projects for ASC and NOAA Fisheries Service. USFWS expertise is also used in other components of hatchery management and evaluation, i.e., statistical support, ASCOM database support, disease screening, biosecurity planning, and marking/monitoring for genetic diversity.

The numbers of Atlantic salmon in Maine populations declined sharply over the last ten years, and have remained at critically low levels in spite of extensive stocking of various life history stages. Stocking river-specific fry in the spring has been the dominant form of population enhancement. Smolt stocking has also been used for a long period on the Penobscot River, and to a lesser extent on the Dennys and Pleasant Rivers. ASC has used a number of assessment methods in an attempt to understand the factors that influence how various stocking approaches affect populations. These include modeling juvenile population abundance; assessing survival and dispersal of stocked fry, and parr density in reaches of varying fry stocking densities; investigating habitat characteristics such as substrate embeddedness; and analyzing adult return data to assess hatchery smolt performance, and comparing naturally reared and hatchery smolt returns. Results indicate: 1) substrate embeddedness may limit young of the year density, 2) stocked fry are able to move to the river bottom quickly upon stocking and then volitionally move downstream at night, 3) young of the year disperse at least up to 1.5 km by the end of the summer at relatively uniform densities, 4) stocking density and recruitment may follow a stock recruit curve (such as Ricker) and we should be able to use this information to optimize stocking densities, 5) modeling indicated that stocked fry may sustain 50 % mortality shortly after stockout and that discounting by 50 % may provide a realistic effective number, 6) one year versus two year smolts may influence the variability in return rates as well as the proportion of grilse, 7) in recent years Penobscot 1SW:2SW ratios have varied, with an approximate alternating year pattern. In addition, ongoing work is comparing the survival of fry reared at Craig Brook National Fish Hatchery versus fish reared streamside in the Sheepscot River, and return rates of wild (naturally reared) versus hatchery smolts on the Penobscot. These investigations indicate substantial room for improvement in restoration strategies using hatchery fish. Notably, stocking numbers and methods, methods of rearing, and habitat factors all influence survival and adaptive management approaches should be used to optimize stocking strategies to recover Maine salmon populations.

Craig Brook National Fish Hatchery and Green Lake National Fish Hatchery currently, or potentially could, provide products to the following rearing facilities: Saco Hatchery, Columbia Falls-Pleasant River Hatchery, Kennebec TU-Sandy River incubation boxes, USDA facility in Franklin, the University of Maine CARS facility, Union River Hatchery, Deblois Hatchery, Kennebec Aquaculture facility in Solon, Gardner Lake Hatchery (IFW), Palermo Hatchery, proposed East Machias Research Center, North Attleboro National Fish Hatchery, and Nashua National Fish Hatchery.

¹ National Research Council of the National Academies of Science. 2004. Atlantic Salmon in Maine. The National Academies Press, Washington, D.C. 275 p.

² U.S. Fish and Wildlife Service. 1989. Final Environmental Impact Statement 1989-2021: Restoration of Atlantic Salmon to New England Rivers. Department of the Interior, U.S. Fish and Wildlife Service, Newton Corner, MA. 88 p. + apps.

³ Bartron, M., D. Buckley, T. King, T.L. King, M. Kinnison, G. Mackey, and T. Sheehan. 2006. Captive Broodstock Management Plan for Atlantic Salmon at Craig Brook National Fish Hatchery. Report to the Maine Technical Advisory Committee. 58 p.

⁴ National Marine Fisheries Service and U.S. Fish and Wildlife Service. 2005. Final Recovery Plan for the Gulf of Maine Distinct Population Segment of Atlantic Salmon (*Salmo salar*). National Marine Fisheries Service, Silver Spring, MD.

⁵ U.S. Atlantic Salmon Assessment Committee. 2006. Annual Report of the U.S Atlantic Salmon Assessment Committee, Report No. 18-2005 Activities. On file: Maine Atlantic Salmon Commission, Bangor, ME. 119 p.

⁶ Baum, E.T., R.B. Owen, R. Alden, W. Nichols, P. Wass, J. Dimond. 1995. Maine Atlantic Salmon Restoration and Management Plan, 1995 - 2000. Atlantic Sea Run Salmon Commission. 54 p (with VII app.)

III. Need for a Consultant

The Atlantic Salmon Commission needs a qualified organization or team to determine whether the current hatchery operations, protocols and practices are being implemented in the most scientifically sound manner to provide the greatest potential for advancing recovery of Atlantic salmon in Maine, and that assessment and evaluation is appropriately integrated into the hatchery program.

IV. Scope of Work

Purpose

To determine whether the current hatchery operations, protocols and practices are being implemented in the most scientifically sound manner to provide the greatest potential for advancing recovery of Atlantic salmon in Maine, and that assessment and evaluation is appropriately integrated into the hatchery program. Deficiencies or shortcomings in the current program should be clearly identified, and approaches to rectifying the identified deficiencies should be outlined.

Scope of the Review

Craig Brook National Fish Hatchery (CBNFH), Green Lake National Fish Hatchery (GLNFH) and other rearing facilities are currently, or potentially involved in restoring Atlantic salmon in Maine rivers. This includes, but is not limited to, the following: Saco Hatchery, Columbia Falls-Pleasant River Hatchery, Kennebec TU-Sandy River incubation boxes, USDA facility in Franklin, the University of Maine CARS facility, Union River Hatchery, Deblois Hatchery, Kennebec Aquaculture facility in Solon, Gardner Lake Hatchery (IFW), Palermo Hatchery, proposed East Machias Research Center, North Attleboro National Fish Hatchery and Nashua National Fish Hatchery.

Recommended Approach

An independent respected scientific body should conduct the review. A Steering Committee consisting of the ASC, USFWS, and NOAA will facilitate the process by providing the terms of reference, reviewing and selecting a contractor, and working with that contractor to ensure all of the necessary information is provided and that the project stays on track and consistent with the intended

purpose. One individual from the Steering Committee will serve as the point of contact for the organization conducting the peer review

Reporting Requirement:

A thorough report documenting the methods and analyses used for the review and the findings and recommendations. The report must address three major program areas: (1) Facilities and Products; (2) Stocking and Evaluation; and (3) Adaptive Management. Results must be presented to a joint meeting of ASC, NOAA, and USFWS managers and biologists.

V. Project Timeline

RFP advertisement in Kennebec Journal	September 11-13, 2006
Questions due via e-mail	September 20, 2006
Answers to Questions	September 27, 2006
RFP due date	October 6, 2006
Award decision	October 14, 2006
Work completed	May 31, 2007

VI. Requirements

- 1) A description of qualifications and experience of each person working on the project.
- 2) Demonstrated ability to conduct independent reviews of fisheries activities.
- 3) Names and telephone numbers of three references.
- 4) Willingness to work closely with ASC, NOAA Fisheries Service, and USFWS staff.
- 5) Work complete by May 31, 2007.
- 6) Cost broken down to include:
 - a) Total cost and time required for project completion;
 - b) Total cost, and time required for each major area in the program review (Purpose, Scope of Review, and Recommended Approach).

The vendor must identify other obligations that may interfere with the timely completion of this project

NOTE: Using a Standard State of Maine Contract, the Maine Atlantic Salmon Commission will contract with the successful bidder for services. This contract will include a formal, written payment process that is indexed to deliverables. The ASC will make payments under the contract after review and approval of the deliverable(s).

VII. Criteria for Evaluating Proposals

- 1) Qualifications and Experience (33.3%)
 - a) Specific training and experience in fisheries management, hatchery maintenance and operations, and conducting program reviews. Professional references.
- 2) Cost (33.3%)
- 3) Project Preparation and Presentation (33.3%)
 - a) Overall quality of the proposal inspires confidence that the contractor has a thorough understanding of the requirements and that the requirements are fully within the bidders capabilities;
 - b) Proposal addresses the terms of reference and all requirements outlined in the RFP. Proposal specifically identifies the individual(s) who will work on various parts of the project.

VIII. Form of Contract

The successful bidder will enter into a standard State of Maine Agreement to Purchase Services, a blank copy of which is attached to this RFP for informational purposes. Submission of a proposal in response to this RFP will be understood as the vendor's acceptance of the standard agreement's terms and conditions.

X. Submission Instruction

Required format:

Cover letter, a statement of project understanding, proposed methodology and project schedule, qualifications, references and costs.

Sealed proposals must be received no later than 2:00PM on Friday, October 6, 2006. Proposals submitted after the above date and time will be rejected.

Send three copies of the proposal to:

Review of Atlantic Salmon Hatchery Protocols, Production, and Product Assessment

RFP# 806422

Division of Purchases

Burton M. Cross State Office Building, 4th floor

111 State Street

9 State House Station

Augusta, Maine 04333-0009

Sealed envelopes must be plainly marked: "Review of Atlantic Salmon Hatchery Protocols, Production, and Product Assessment – RFP # 806422".

Bidders are invited to submit written questions by September 15 2006 via e-mail to the Atlantic Salmon Commission to obtain additional explanation or clarification of the Scope of Work.

Contact: Patrick Keliher, Executive Director, Atlantic Salmon Commission, at Patrick.keliher@maine.gov

Rider G

Provision of Contract Services by Foreign Nationals or Work Performed Abroad

The Maine Legislature has asked the Division of Purchases¹ to determine the country where contracted services will be performed.

The following contract/amendment has been executed with the State of Maine.

1	Division of Purchases Contract Reference
2	Contractor Name
	< Highlight and enter the Name of the Contractor >
3	Brief Contract Service Description
	< Highlight and enter a Brief Description of the Service Provided >

So that we may comply with the Legislature's request, please provide responses to the following questions. To successfully complete the questionnaire be alert for follow-up entries if certain responses are made.

Please show your responses in the spaces provided. You may mark any box with ☐ using your computer, keyboard & mouse.

Highlight the box (☐) with your cursor and type a lowercase "x." If additional entries are needed, type to the right of the mark (>) shown in questions 1 and 3.

1. Will any of the services described in the contract's scope of work be performed outside of the United States of America?

- ☐ No. [Go to Q.3.](#)
☐ Yes. [If "Yes," show in what country\(ies\) below and Continue w/Q.2 and Q3.](#)
 >

2. If you responded "Yes," above, who will perform any of the services described in the contract's scope of work?

- ☐ Citizens of the USA living abroad. ☐ Foreign nationals.

3. In what US state or foreign country is your firm incorporated?

>

Name of the Person Submitting the Information	Voice Phone Number

[Thank you for completing this information.](#)

Notification of Changes to the Information

A provision of the Resolve requires service providers to notify the Division of Purchases of any changes to this information.

¹ Resolve, Chapter 16, First Special Session-2005.

Agreement No:

STATE OF MAINE

ATLANTIC SALMON COMMISSION

Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, _____, hereinafter called "Department," and _____, located at _____, telephone number _____, hereinafter called "Provider", for the period of _____ to _____.

The Employer Identification Number of the Provider is _____

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

Rider A - Specifications of Work to be Performed

Rider B - Payment and Other Provisions

Rider C – Exceptions to Rider B

Rider G – Work Performed Abroad

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in _____ original copies.

DEPARTMENT OF

By: _____

Name and Title, Department Representative

and

By: _____

Name and Title, Provider Representative

Total Agreement Amount: \$ _____

Chair, State Purchases Review Committee

MFASIS ACCOUNT CODING

VENDOR CODE	DOCUMENT TOTAL	FUND	AGY	ORG	SUB ORG	APPROP	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPORT. CATEG.
123456789	1234567	12	12	123	123	1234	1234	123	123	124	123

[illegible][illegible][illegible][illegible][illegible]

RIDER A

SPECIFICATIONS OF WORK TO BE PERFORMED

Terms of Reference to be addressed:

The Peer Review will focus on three major program areas: (1) Facilities and Products, (2) Stocking and Evaluation, and (3) Adaptive Management. The specific terms of reference for each of these areas are described below.

(1) Facilities and Products

- a) Are the physical facilities adequate for the existing program? What limitations do they pose to the current program or to modifications to that program?
- b) Are the existing containment protocols adequate? How could they be improved?
- c) Identify and evaluate different rearing options within a facility – how independent are rearing bays (equipment, water source, electricity, etc.)? Is that independent enough? Identify alternative approaches to be considered, if any. Characterize the demographic and disease risks of isolation rearing options (stocks spread across facilities, stocks isolated in a single rearing bay in one facility, stocks spread across multiple bays in one facility).
- d) Identify ways other private and public partners can supplement the Federal hatchery program to further recovery.

Numbers produced

- e) Are the production goals appropriate and are they being met? Identify alternative goals, if appropriate.
- f) Could the survival and overall quality be enhanced by reducing the quantity of fish stocked?
- g) Should products be artificially manipulated during early life history in order to meet production goals (1-year versus 2-year smolts)?

Genetics

- h) Are the short- and long-term genetic goals appropriate and are they being met? Includes review of broodstock management plan. Identify alternative goals, if appropriate.
- i) Should the hatchery population, e.g., broodstock, be integrated or segregated from the natural population? Identify strategies to accomplish suggested approach.
- j) Is there a more effective method, other than stocking, to preserve the genetic integrity of the Gulf of Maine DPS until such time that improvements in environmental conditions permit populations to expand and recover?
- k) Identify and evaluate different strategies – maintain river specific strains versus managing as a DPS.
- l) Characterize the risks and benefits of collecting broodstock at a variety of life histories.
- m) Identify strategies for increasing genetic diversity within a population, including how to respond to outside influences such as unintentional introductions from freshwater hatcheries and/or marine sea cages.

Quality (disease status, size, physiologic condition)

- n) Are the quality goals appropriate and are they being met?
 - o Includes review of protocols for fish care and incident reporting
 - o Includes review of fish health protocols
 - o Review protocols for timing of spawning, temperature, light, rearing conditions

- (artificial versus natural river conditions)
- Identify alternative goals, if appropriate.

(2) Stocking and Evaluation

- a) What is the contribution of the hatchery program to the recovery effort?
- b) Is the current monitoring and evaluation adequate? Are there better ways to evaluate the hatchery products? Are “best management practices” for successful hatchery-assisted recovery programs being used?
- c) Identify and assess the risks and benefits of alternative stocking strategies for their ability to further recovery [what life stage, when stocked, how stocked, where stocked (including consideration of vacant habitat)].

(3) Adaptive Management

- a) Do the hatchery, management and assessment programs function as an integrated adaptive management program?
- b) Identify ways in which the hatchery program could be used adaptively as a scientific tool for addressing critical uncertainties.

In order to facilitate the review, the Steering Committee will identify and compile available information and reference materials for the peer review. At a minimum, the following information will be made available for the review:

1. Description of the active and potential hatcheries – physical and logistical description.
2. Description of the existing hatchery program:
 - a) Identify life stage and source of what is collected from the wild;
 - b) Describe life stages held;
 - c) Identify existing goals, policies, plans, and protocols guiding hatchery programs – genetic goals, production goals, and quality goals and describe how the hatchery fits in with the overall recovery effort;
 - d) Identify existing measures to evaluate the program against those goals; and
 - e) Identify available data and analysis for the evaluation.

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

<highlight and show how payments will be made>

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that (s)he is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** Progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name	Title	Address
< Highlight & show Name in space>	<Highlight & show Title in space>	<Highlight & show Address in space>

The named is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise there from directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim

made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with

normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

Rider G

Provision of Contract Services by Foreign Nationals or Work Performed Abroad

The Maine Legislature has asked the Division of Purchases² to determine the country where contracted services will be performed.

The following contract/amendment has been executed with the State of Maine.

1	Division of Purchases Contract Reference
2	Contractor Name
< highlight and enter the Name of the Contractor >	
3	Brief Contract Service Description
< highlight and enter a Brief Description of the Service Provided >	

So that we may comply with the Legislature's request, please provide responses to the following questions. To successfully complete the questionnaire be alert for follow-up entries if certain responses are made. Please show your responses in the spaces provided. You may mark any box with ☐ using your computer, keyboard & mouse. Highlight the box (☐) with your cursor and type a lowercase "x." If additional entries are needed, type to the right of the mark (>) shown in questions 1 and 3.

1. Will any of the services described in the contract's scope of work be performed outside of the United States of America?

☐ No. [Go to Q.3.](#)
☐ Yes. *If "Yes," show in what country(ies) below and Continue w/Q.2 and Q3.*
 >

2. If you responded "Yes," above, who will perform any of the services described in the contract's scope of work?

☐ Citizens of the USA living abroad. ☐ Foreign nationals.

² Resolve, Chapter 16, First Special Session-2005.

3. In what US state or foreign country is your firm incorporated?

>

Name of the Person Submitting the Information	Voice Phone Number

Thank you for completing this information. You may send the completed form by email to the Division of Purchases [Jerry.Nault@maine.gov] or return it by telephone facsimile [207/287-6578] in addition to a response by regular post [9 State House Station, Augusta, ME 04333-0009].

Notification of Changes to the Information

A provision of the Resolve requires service providers to notify the Division of Purchases of any changes to this information. That notification may be sent to the address shown above and should reference the Purchases File Number.